

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

And

Department of State

Record of Proceedings
FSGB Case No. 2020-036

January 6, 2021

ORDER: MOTION TO COMPEL

(Excised)

For the Foreign Service Grievance Board:

Presiding Member:

Susan R. Winfield

Board Member:

Leslie A. Bassett

Special Assistant:

Cristina M. Meaney

Representative for the Grievant:

Pro Se

Representative for the Department:

Elizabeth A. Whitaker
Grievance Analyst, GTM/G

Employee Exclusive Representative:

Zlatana Badrich
American Foreign Service Association



ORDER: MOTION TO COMPEL

I. ISSUE

This order addresses a motion, filed by [REDACTED] (“grievant”), to compel the Department of State (“Department,” “agency”) to provide additional responses to certain of his requests for discovery.

II. BACKGROUND

Grievant joined the Department as a Diplomatic Security (“DS”) special agent (SA) in August 2010. His security clearance authorized him to access Secure Compartmentalized Intelligence (“SCI”). In March 2011, he was briefed on his responsibilities associated with such SCI access, including, *inter alia*, an obligation to report certain foreign contacts and foreign travel.¹

In December 2013, grievant began an assignment at the U.S. Embassy in [REDACTED] [REDACTED] (“Embassy,” “Post”) as an Assistant Regional Security Officer (“ARSO”). Grievant was accompanied by his then spouse, who worked as an Eligible Family Member in the Embassy. The couple, already in the throes of marital stress, separated in February or March 2014, according to grievant. In late February 2014, grievant began an affair at Post with a foreign national who was a locally employed staff member (“LES,” “LES 1”) hired by the Department of Justice. Grievant was not yet divorced from his wife.

In late March 2014, grievant began another affair with a married foreign national who was also an LES (“LES 2”) who worked for the ARSO-Investigations (“ARSO-I”) office. LES 2

¹ Department Notice 2009-09-11892 (September 16, 2009) cites specific reporting requirements for those holding SCI clearances to include: “Close and continuing personal association (e.g., friendships, dating, or other intimate relationships that would lead to the exchange of personal information) with a foreign national (i.e., non-U.S. citizen). Intent to co-habit or enter into marriage with a foreign national must be reported prior to the event” and “unofficial travel to any foreign country.”

was not in grievant's direct chain of command. She worked in the ARSO-I office, while grievant worked in the ARSO office.

In early April 2014, grievant and LES 2 took a weekend trip [REDACTED], for which grievant should have registered, prior to his travel, in the DS Locator system. Grievant was responsible for managing the DS Locator system and failed to register his out of country travel. During the trip [REDACTED], LES 2 informed grievant that she was pregnant, and he was the father. On April 14, 2014, after returning from [REDACTED], LES 2 informed her supervisor in the ARSO-I office of her pregnancy. On April 15, 2014, grievant filed the necessary security notification regarding his relationship with LES 2 but did not give notice of his previous relationship with LES 1.

On April 17, 2014, the Deputy Chief of Mission ("DCM") at the Embassy requested that the DS Office of Special Investigations ("DS/DO/OSI") open an investigation into grievant's apparent failure to comply with reporting requirements with reference to his relationship with LES 2.² On April 23, 2014, the DCM advised grievant to seek voluntary curtailment, noting that if he did not do so, she would recommend that the Ambassador order his involuntary curtailment.

On April 30, 2014, LES 1 informed grievant that she was pregnant, and that he was the father. Grievant denied paternity but resisted taking a paternity test.

On June 13, 2014, LES 2 resigned from her Embassy position. On June 18, 2014, grievant requested voluntary curtailment from post. On July 30, 2014, DS/DO/OSI completed its Report of Investigation ("ROI") which covered grievant's failure to properly record his out-of-country travel [REDACTED] in the DS Travel Locator and his failure to properly give notice of his

² At that point, the DCM and others were not aware of grievant's relationship with LES 1 and grievant did not disclose it

relationship with LES 2. This report was forwarded to the Bureau of Human Rights, Office of Employee Relations, Division of Conduct, Suitability and Discipline (“HR/ER/CSD”)³ for action.

Before any action was taken, however, LES 1 came forward in October 2014 to report to the Regional Security Officer (“RSO”) that grievant was the father of her as-yet unborn child. She provided copies of e-mail and text message exchanges with grievant, dated between May and August 2014, in which he allegedly threatened and attempted to intimidate her. This triggered a second investigation by DS/DO/OSI which was concluded in March 2015 and forwarded to HR/ER/CSD.

Grievant married LES 2 in December 2014. Their son was born on December 18, 2014. That same month, LES 1 gave birth to a daughter and allegedly registered with her government that grievant was the father.

In 2015, grievant was assigned to the U.S. Embassy [REDACTED] where he again was serving as ARSO. LES 2 accompanied him as his wife. On July 7, 2016, LES 2 allegedly sent a text message to LES 1 suggesting that grievant might harm her (LES 2). On July 9, 2016, LES 2 was medically evacuated from post for mental health reasons. She was accompanied by grievant and their two children. On August 4, 2016, LES 2, grievant, and the children, met with medical personnel from the Office of Medical Services (“MED”) to discuss her treatment. MED staff alleged that grievant became threatening, claimed to be recording their conversation for use in threatened lawsuits, and otherwise acted in an intimidating manner. This prompted a third DS/DO/OSI investigation that was requested by MED on August 5, 2016. This last investigation

³ The Bureau of Human Resources (HR) has since been renamed the Bureau of Global Talent Management (GTM).

was completed on September 12, 2016 and the ROI was forwarded to HR/ER/CSD, which now had three ROIs related to grievant.

In a December 8, 2017 letter, after reviewing the ROIs, HR/ER/CSD proposed a 30-day suspension based on five different charges with 22 specifications, addressing all three investigations collectively. Grievant provided a written response to the charges on February 7, 2018. On January 23, 2019, the Deciding Official (the Deputy Assistant Secretary (“DAS”) for HR) upheld all 5 charges, 20 of 22 specifications, and sustained the 30-day proposed suspension.

Grievant then filed a grievance concerning this finding, on February 14, 2019, requesting interim relief from the suspension, which was granted. The Department sustained in part the suspension decision in an agency grievance decision letter, dated May 18, 2020. The DAS for Global Talent Management (GTM) upheld four of the five charges, 12 of the remaining 20 specifications, and mitigated the proposed penalty to a 12-day suspension.

Grievant filed an appeal with the Foreign Service Grievance Board (“FSGB” “Board”) on June 2, 2020. He contests the mitigated suspension, as well as the four charges and 12 specifications that were sustained. On October 13, 2020, grievant filed the pending motion to compel (“MTC”) additional responses to discovery requests; the Department filed a response on November 12, 2020, to which grievant filed a reply on December 12, 2020.

We summarize the pending charges for purposes of evaluating the MTC.

Charge 1: FAILURE TO REPORT CONTACT

Specification 1

Between February 27, 2014 and June 18, 2014, while serving as an ARSO with an SCI clearance, grievant failed to report a close and continuing personal relationship with LES 1.

Specification 2

Between March 29, 2014 and April 14, 2014, while serving as an ARSO with an SCI clearance grievant failed to report a close and continuing personal relationship with LES 2.

Charge 2: FAILURE TO FOLLOW POLICY

Specification 1

While serving as an ARSO with SCI access grievant failed to submit a DS Travel Locator or otherwise report in advance travel [REDACTED] on April 11, 2014, in violation of Department's Travel Locator policy.⁴

Charge 3: NOTORIOUSLY DISGRACEFUL CONDUCT

Specification 2

Grievant engaged in notoriously disgraceful conduct in the spring of 2014 when he had already engaged in one extramarital affair and then entered into an additional extramarital affair with LES 2 which resulted in her pregnancy and grievant's curtailment.

Charge 4: WORKPLACE VIOLENCE

Specification 1

On April 30, 2014, grievant threatened LES 1 that if she came forward about her pregnancy grievant would humiliate her and take custody of the child.

Specification 2

On May 1, 2014, grievant again threatened LES 1 that if she reported her pregnancy and his paternity, grievant would enlist RSO colleagues to humiliate her.

Specification 3

On May 1, 2014, grievant threatened LES 1 that if she reported her pregnancy and his paternity, grievant would destroy her and take the baby away from her

Specification 4

On May 30, 2014, grievant sent LES 1 an intimidating text message threatening self-harm if she discloses his paternity

⁴ 12 FAM 425(d) reads in relevant part, "All RSOs, DRSOs, and ARSOs are required to report all personal and official travel to DS/IP/RD or DS/HTP/RD, as assigned via the DS Travel Locator.

Specification 5

On June 17, 2014, grievant yelled at LES 1 causing her to feel afraid and traumatized.

Specification 6

On June 17, 2014, grievant sent LES 1 intimidating text messages regarding the impact to his career if she comes forward.

Specification 7

On June 30, 2014, grievant sent LES 1 a text message again threatening self-harm if she comes forward.

Specification 8

On August 15, 2014, grievant verbally threatened LES 1 that if she came forward he would self-harm and take custody of the baby.

Specification 10

On August 4, 2016, while off-duty and acting as a medical attendant to his wife, grievant intimidated MED personnel by falsely claiming he was recording his meeting with them despite their objections.

III. POSITIONS OF THE PARTIES AND BOARD RULINGS

Below, we discuss each request in the MTC, the agency's response(s), the parties' respective arguments for and against the MTC, and the Board's rulings.

Document Request 4:

All records and written communication, including but not limited to memos, letters, and emails, pertaining to [grievant], [LES 2], and/or [LES 1] for the period 2014-present, in relation to [post] personnel, M/MED, DS/OSI, DGHR, HR/ER, HR [post]. This should include:

- a. Any e-mails, memos, meeting minutes, or other written documents regarding [grievant's] case by Special Agents or other RSO Staff in [post] during the incident in question.
- b. Any e-mails, memos, meeting minutes, or other written documents regarding [grievant's] case by [post] Management, HR, and/or Front Office staff.
- c. Any e-mails, memos, meeting minutes, or other written documents regarding [grievant's] case by DS/OSI.
- d. Any e-mails, memos, meeting minutes, or other written documents regarding [grievant] or [LES 2] by M/MED.

- e. Any e-mails, memos, meeting minutes, or other written documents regarding [grievant's] case by M/DGHR (now M/DGTM).
- f. Any e-mails, memos, meeting minutes, or other written documents regarding [grievant's] case by HR/ER (now GTM/ER).

The Department's Discovery Response:

The Department initially objected on the grounds that the request sought information that was irrelevant, immaterial, and not likely to lead to such information. The Department further objected on the ground that the information requested was overly broad and unduly burdensome because it sought medical information pertaining to a third party (LES 2) without a medical release. The Department lastly contended that it had provided all materials related to the three ROIs "with the exception of that referenced in Document Request 9 [which grievant did not raise in the MTC]."

After discussion between the parties, the Department amended its response, objecting only on the bases that the request was for irrelevant and immaterial evidence and was "overly broad in scope of time and subject matter."

Grievant's MTC Argument:

Grievant argues first that relevancy should be considered broadly, citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978), *Hayes v. Department of Health and Human Services*, 829 F.2d 1092, 1103 (Fed Cir. 1987) and *Hickman v. Taylor*, 329 U.S. 495 (1947). He insists that this document request is relevant to his appeal. He further contends that he submitted a medical release from his current spouse. The ROIs, he argues, are biased against him, and deliberately omit or discount possible exculpatory information. For that reason, grievant asks to see complete versions of all e-mails, transcripts, or correspondence that are cited or referenced in any of the three ROIs. He defends the timeframe covered by the request on the ground that the Department prolonged its investigations and discipline decisions to the point where some involved personnel and witnesses have retired or left the agency.

The Department's Opposition to the MTC:

The Department challenges this request for materials dating from 2014 to the present, arguing that the last of the three incidents of misconduct took place in August 2016 and the ROI for this incident was submitted in September 2016. The Department asserts that it provided grievant with "all documents that have not previously been disclosed, that were collected in the course of this disciplinary investigation," citing FSGB Case No. 2016-038 (March 01, 2018). The agency asserts that it has provided the complete "evidentiary" file for all three investigations, "with the exception of non-evidentiary background documents that were contained in the files."

The Board's Findings:

The standard for discovery, pursuant to the Board's Policies and Procedures ("P&P") 6, is that any party may seek discovery of "non-privileged information that is relevant to the issues presented in the case, or which may lead to discovery of relevant information" This same procedure provides that in response to requests for discovery of documents, the party receiving the requests may object on grounds that: (1) the requested information is irrelevant or immaterial to the issues on appeal, (2) the requests impose an undue burden to produce the information, or (3) the requests are overly broad in scope. *See*, FSGB Case. No. 2005-040 (February 3, 2006) and FSGB Case No. 2000-022, (August 24, 2000).

The Board's authority to compel discovery is found in 22 U.S.C. § 4138 which states in part:

(a) ... If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance. ...

(b)(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.⁵

See also P&P 6.1.4:

If a response to a request for discovery is not provided ... the requesting party may file a motion to compel responses. ... [T]he Board requires that before a Motion to Compel may be filed, the requesting party must first endeavor to resolve or at least narrow the dispute informally with the other party. The parties must confer in good faith.

⁵ *Accord*, 22 CFR § 903.9(a): "If a party is denied access to any Agency record prior to or during the consideration of a case by the Agency, the party may protest such denial before the Board in connection with the case." *See also*: 22 CFR § 903.9(b)(1): "[T]he Board shall request access to any Agency record which the grievant/charged employee requests to substantiate his or her grievance or defense to a charge if the Board determines that such record may be relevant and material to the case."

In deciding motions to compel, the Board often consults the Federal Rules of Civil Procedure (FRCP), which, although not binding, offer helpful guidance. FSGB Case No. 2017-016 (August 22, 2017).⁶ In a motion to compel responses to discovery requests, the burden is on the grievant to prove that the requested documents are both relevant and material to the grievance. FSGB Case No. 2016-027 (October 28, 2016); FSGB Case No. 2011-013 (September 28, 2011).

In this instance, the Board finds that the relevant time frame for discovery is April 14, 2014 to December 8, 2017, which is the date of the first notice of the suspension proposal given by the Department to grievant.

The Board acknowledges the Department's assertion that it has provided material relevant to this request, however, we note that the agency states that it has excluded "non-evidentiary" material from the three investigative files. The Board is unaware of what the Department is labeling as "non-evidentiary material" and is unaware of the basis upon which the Department has excluded disclosure of such materials. There is no exception for "non-evidentiary material" in the definition of what is discoverable. Accordingly, the Board grants the MTC additional responses to this request and orders the Department to produce all materials not previously produced, whether those materials are deemed "evidentiary" or "non-evidentiary," that are responsive to the request during the period from April 14, 2014 to December 8, 2017.

⁶ See FRCP 37:

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) *In General*. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. ...

(3) *Specific Motions*. ...

(b) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if: ...

(iv) a party fails to produce documents ... as requested under Rule 34. *See also*, FRCP 26(b)(1) that seeks to ensure that discovery is "proportional" to the needs of the case.

Document Request 5:

Please produce SA [name deleted]'s written statement provided to the Office of Conduct Suitability and Discipline [GTM/ER/CSD] regarding the handling of [LES 2's] Medevac, the subject of the Charge related to Workplace Violence.

The Department's Discovery Response:

The Department initially stated that it had provided all materials in the ROIs and all materials relating to the referral to GTM/ER/CSD. The Department further stated that GTM/ER/CSD has no access to materials related to a medevac.

After a conference between the parties, the Department amended its position and stated that there were no responsive documents pertaining to the request for the SA's statement.

Grievant's MTC Argument:

Grievant argues that the request is relevant and material, stressing that the Department's Deciding Official made specific reference to the requested statement in the agency's December 2017 discipline proposal letter. Grievant argues that it is "troubling in the extreme" that the Department cannot find or produce the statement that the agency relied upon when proposing discipline. He speculates that it is part of his wife's MED file and for that reason is not being produced, despite the fact that his wife had signed a medical records release. In the MTC, grievant expands his initial request by arguing that he is entitled to all medevac records related to his wife. He later appears to abandon this expansion when he does not argue in favor of it in his MTC reply submission.

The Department's Opposition to the MTC:

The Department argues that GTM, DS and the named SA have conducted "a reasonable search" and were unable to locate the requested document. The agency notes that a subsequent revised request by grievant demanding all documents related to the medical evacuation of LES 2 constitutes improper follow-on discovery.

The Board's Findings:

The Board finds that grievant is entitled to see the referenced statement, especially because it was cited in the proposal letter issued by the Department. The statement is relevant both to the Department's decision to propose discipline and may be relevant to grievant's preparation of a defense to certain of the charges. The Board grants the MTC a further response to this request in part and orders the Department to undertake an exhaustive search in an effort to

locate and produce the requested statement. Should that measure fail, the Department shall provide a full accounting of its efforts and an explanation for the unavailability of the statement. Grievant may then present any arguments he may have as to whether the Department's inability to produce the statement has any bearing on the viability of any related charges.

Regarding grievant's effort to expand this discovery request to include all documents related to the medical evacuation of his wife, we note that our P&P provide: "If the initial responses to discovery raise new issues that could not have been anticipated previously, the party submitting these discovery requests may submit follow-on discovery requests – but only to the extent necessary to address the new issues." P&P 6.1.3. If follow-on discovery is served, the receiving party may challenge the follow-on requests as being beyond the scope of any new issues raised in the first responses. *Id.* The Board concludes that in this instance, grievant's expansion of the original discovery request is not proper follow-on discovery. Grievant appears to acknowledge this when he failed to argue in favor of it in his reply submission. Accordingly, we deny the motion to compel the expanded discovery request for all medevac records for LES 2.⁷

Document Request 8:

Please produce the entire evidentiary file prepared by OSI in its investigation, including any potentially exculpatory information discovered during the OSI investigation, and any material that was not otherwise included in the ROI, to include any emails, memos or other documents between DS/OSI, DS/PSS [Personnel Security and Suitability] and [Post], HR/ER and/or M/DGHR [Director General].

The Department's Discovery Response:

The Department initially responded that it had provided all materials related to each of the ROIs and the referral to GTM/ER/CSD.

⁷ Grievant presumably could have made this expanded request for his wife's medevac records when he first submitted discovery requests, if accompanied by the necessary medical release forms.

After consultation between the parties, the Department objected to the request to the extent that it sought information protected by the attorney-client privilege, the attorney work product privilege, and the law enforcement privilege. The Department further stated that it reviewed all paper files related to the three ROIs and provided any responsive non-privileged documents “with the exception of any non-evidentiary background documents that were contained in the files.”

Grievant’s MTC Argument:

Grievant argues that he is entitled to discover all exculpatory material that has not been provided. Regarding the Department’s assertion of privileges, he asks the Board to conduct an *in camera* review of the materials to make its own assessment, citing FSGB Case No. 2010-008 (July 7, 2010). He asks that, if this request is denied, the Board should note that he was not given access to the full record on which the proposed suspension was made.

The Department’s Opposition to the MTC:

The Department argues that it has already responded to this request by providing “the entire evidentiary file prepared by OSI” for all of the investigations with the exception of “non-evidentiary background documents that were contained in the files.” The Department contends that grievant has not identified any documents that have not already been produced that might contain relevant or exculpatory material.

The Board’s Findings:

The Board again notes that the scope of discovery is not limited to “evidentiary” documents. P&P 6.2.2 provides: “The right of each party to discovery may include requests for production of relevant and material documents in the possession or control of any other party.” We find that there is no basis on which the Department may refuse to disclose “non-evidentiary background documents.” If these “non-evidentiary background documents” are relevant and material to the issues or defenses in the case, they must be disclosed.

Moreover, grievant is entitled to discover all exculpatory material in the Department’s possession, regardless of whether it is inside or outside of the evidentiary file prepared by OSI, unless protected by privilege. By definition, exculpatory material is relevant to the defense to the charge(s). *See* FSGB Case No. 2012-040 (May 22, 2013) at 16:

... [I]n our view it is a denial of fundamental due process not to have notified grievant much more promptly that discipline was under consideration. If such notice had been given closer in time to his curtailment, grievant would likely have been in a better position to defend himself against all allegations of misconduct by gathering exculpatory or explanatory evidence from a number of sources.

With regard to the assertions of privilege in response to discovery, our P&P provide:

“... [A] party may assert a privilege or claim that the discovery requests violate the Privacy Act (5 U.S.C. § 552a).” P&P 6. Regarding claims of privilege, the Supreme Court has long held:

It is said that inquiry may be made under these [Federal] rules [of Civil Procedure], epitomized by Rule 26, as to any relevant matter which is not privileged; and since the discovery provisions are to be applied as broadly and liberally as possible, the privilege limitation must be restricted to its narrowest bounds.

Hickman v. Taylor, *supra* 329 U.S. at 506. In general, the Department must assert privileges with specificity and may not rely on a general objection, asserting privileges without support.

See FSGB Case No. 2011-024 (February 12, 2016) at 18-19:

It is axiomatic that the assertion of the privilege does not itself confer the privilege. *See* [FRCP] 26(b)(5): When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed--and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

See also, United States v. Tratner, 511 F2d 248 (7th Cir. 1975) (Claimant of privilege, rather than proponent of evidence, bears burden of proof on privilege questions.). Instead, the assertion of the privilege does no more than present a legal issue to be decided by the Board. (citation omitted).

We note that the Department has not met its burden of proving privilege, but instead, seeks to reverse the burden of proof by arguing that grievant has failed to identify documents that were not disclosed. Moreover, the Department makes no more than a bare assertion of several privileges, without establishing a basis for same. Accordingly, the motion to compel must be granted with respect to this request. The Department shall disclose all previously undisclosed

exculpatory information anywhere in its possession unless that information is protected by privilege. To the extent that the Department seeks to assert a privilege, it must expressly make the claim with regard to each item withheld, describe the nature of the item withheld, and do so in a manner that, without revealing the privileged information, will enable the Board to assess the claim. Alternatively, the Department may provide the materials withheld, along with the assertions of privilege and the grounds therefor, for *in camera* inspection by the Board.

Interrogatory 6 (to two named SA's):

Following [LES 2]'s successful U.S. visa application, you met with her that same day and stated she was wrong to apply for a visa to the United States without going through the Regional Security Office. What policy or procedure was she in violation of in applying for a U.S. visa?

The Department's Discovery Response:

The Department responded that the information sought by this request was neither relevant nor material to the issues in the grievance appeal, nor would it likely lead to the discovery of such information.

Grievant's MTC Argument:

Grievant asserts that the exchange between the discovery witnesses and his wife regarding her visa application was typical of a pattern of bullying and attempts to intimidate her, which he argues is relevant to his defense. He further contends that there was a clear conflict of interest when the same RSOs at post investigated both his relationship with his wife and later, his relationship with LES 1. This, he argues, helps to establish his state of mind during one of the charged incidents.

The Department's Opposition to the MTC:

The Department maintains that the information sought is neither relevant nor material to the issues in the grievance. Specifically, the Department contends that the question about the policy or procedure that LES 2 allegedly violated is wholly unrelated to the discipline issues. The agency argues that a policy or procedure cannot establish bullying or intimidation, nor can it prove a state of mind.

The Board's Findings:

The Board finds that the request is neither relevant nor material to the issues in the grievance appeal, nor will it likely lead to relevant or material information. The MTC is denied with respect to this request.

Interrogatory 7 (to Clinical Director of Mental Health Services, [named]):

During [LES 2]'s Medevac, you advised accompanying attendant, [named] Special Agent, that if [LES 2] refused to willingly go to the hospital that he should be prepared to "go nuclear" and advise that her husband ([grievant]) would use this against her in custody determinations. Under whose direction did you make such assertions and why?

The Department's Discovery Response:

The Department argued that this request sought information that is neither relevant nor material to the issues presented in the grievance appeal, nor would it likely lead to the discovery of relevant and material information.

Grievant's MTC Argument:

Grievant argues that the requested information was provided to him in an email. Moreover, he argues, he has provided a medical release from his wife to permit the Department to inquire of the named doctor. He further argues that the email he received validates his other requests because the statement by the doctor was not mentioned in the ROI and helps to explain that the Department's handling of the medevac was "irregular and heavy-handed" which, in turn, helps to explain that his behavior was not threatening or "problematic." Grievant then added to his original request by seeking the same information from a different doctor at MED.

The Department's Opposition to the MTC:

The Department maintains its original objection on the grounds of relevancy and materiality. The agency contends that the question posed is not relevant to the issues in the discipline proposal. Moreover, the Department objects to grievant's attempt to expand this request to include a second MED official on the ground that this is not proper follow-on discovery.

The Board's Findings:

The Board finds that the request for the authority for the first named doctor to make statements to the named Special Agent is irrelevant and immaterial to the issues in the discipline proposal and it is not likely to lead to the discovery of such information. The MTC is denied

with respect to this request. Grievant's request to add the second MED officer to this interrogatory is not proper follow-on discovery and for the same reasons noted above, fails to seek relevant or material information. Accordingly, the MTC further responses to the expanded request is denied.

IV. ORDER

The motion to compel is granted in part and denied in part. The Department shall provide additional responses as ordered herein within 20 days from the date of this order.

Further discovery is stayed pending the Department's further responses consistent with this order.⁸

For the Foreign Service Grievance Board:



Susan R. Winfield
Presiding Member



Leslie A. Bassett
Member

⁸ See P&P 6.1.2 provides: "If an objection or claim of privilege has been asserted by the agency or recipient of interrogatories, the requesting party may file a motion to compel further responses ... and may await resolution of the motion to compel before filing follow-on discovery. See also, P&P 6.1.3 "Timelines for requests for follow on discovery will be tolled in cases where a motion to compel has been filed after the first discovery request, unless the parties agree to waive tolling of the timeline."